

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Amendment of Parts 73 and 74 of the)
Commission's Rules to Establish Rules)
For Digital Low Power Television,)
Television Translator, and Television)
Booster Stations and to Amend Rules for)
Digital Class A Television Stations)

MB Docket No. 03-185

To: The Commission

COMMENTS OF ISLAND BROADCASTING CO.

ISLAND BROADCASTING CO. ("Island"), by its counsel, hereby respectfully submits limited comments in response to the Notice of Proposed Rulemaking, FCC 03-198 ("NPRM"), released August 29, 2003, in the above captioned proceeding. In support hereof, the following is shown:

1. Island applauds the Commission for addressing the numerous issues surrounding the conversion of Class A television stations, television translator stations and low power television ("LPTV") stations from analog to digital service. However, for the reasons articulated below, Island believes the Commission should not require the conversion of incumbent analog LPTV stations to digital operations by a date certain, but rather, should adopt a flexible approach that permits market forces to dictate such conversion.

I. Background

2. Island is the licensee of five LPTV stations, four of which are licensed to New York, New York, and the fifth to Darien, Connecticut.¹ Island's Managing Partner is Richard D. Bogner, former President of Bogner Broadcast Equipment Corp., a leading manufacturer of VHF and UHF television broadcast antennas from 1967 to 1990. Mr. Bogner is a prominent authority in the field of television engineering and particularly with respect to LPTV. Island, itself, is a pioneer in LPTV broadcasting, having received its first construction permit in 1980 for the station that is now WNYX-LP.

3. The aggregate coverage area of Island's stations encompasses Brooklyn, Queens, Bronx, Manhattan and most of Nassau County, New York. All of Island's stations offer niche programming, much of which is locally produced, and all of which is primarily oriented toward specific ethnic, racial and special interest groups, including many non-English speaking communities in New York.

II. The Commission Should Forebear From Requiring the Digital Conversion of Analog LPTV Stations by December 31, 2006.

4. Island limits its comments herein to the critically important issue raised in ¶¶113-115 of the NPRM - - whether the Commission should require incumbent analog LPTV stations (as opposed to analog Class A TV stations or TV translator stations) to convert to digital operations by the digital transition deadline (currently December 31, 2006). Island respectfully submits that there is no statutory or public interest basis for the Commission to require the conversion of incumbent analog LPTV stations to digital

¹ Island's New York stations are: WNXV-LP, Channel 26 (Facility I.D. 29233); WNYN-LP, Channel 39 (Facility I.D. 74305); WNYX-LP, Channel 35 (Facility I.D. 29236); and WXNY-LP, Channel 32 (Facility I.D. 29231). Requests are currently pending to change the call sign of the Darien station (Facility I.D. 56043) from W33BS to WNYZ-LP, and the city of license to New York, New York.

operations by a date certain. Accordingly, Island urges the Commission to act with regulatory flexibility and restraint, thereby allowing market forces to dictate when analog LPTV stations should convert to digital operations.

A. There is No Statutory Requirement for Digital Conversion of Analog LPTV Stations by the Current Digital Conversion Deadline.

5. As the Commission correctly analyzed in ¶¶ 113 and 114 of the NPRM, the provisions of the Communications Act of 1934, as amended (the “Act”), that require digital conversion of analog television stations by December 31, 2006 do not apply to LPTV stations. Indeed, all such provisions apply either to full service television stations, Class A stations or TV translator stations.

6. Specifically, §309(j)(14)(A) of the Act, 47 U.S.C. §309(j)(14)(A), prohibits the Commission from renewing the license of an “*analog broadcast television service*” for a period extending beyond December 31, 2006. As the NPRM properly recognizes, an “*analog broadcast television service*”, as defined in Section 3 of the Act, 47 U.S.C. §153(49), means television service provided pursuant to the transmission standards prescribed in §73.682(a) of the Commission’s rules. Since that section of the Commission’s rules does not govern LPTV stations, then clearly, the December 31, 2006 deadline for analog stations’ operations contained in §309(j)(14)(A) cannot apply to LPTV stations.

7. Moreover, as acknowledged in ¶114 of the NPRM, §336(f)(4) of the Act, 47 U.S.C. §336(f)(4) provides that Class A stations and TV translators shall not be required to convert to digital operation until the end of the transition period. However, no similar deadline is clearly articulated for analog LPTV stations. Even though the last

sentence of §336(f)(4)², which, when read out of context, might arguably apply to LPTV stations, Island submits that such an interpretation would be in error.

8. Indeed, the exclusion of LPTV stations from the provisions of §336(f)(4) is evident from the legislative history of the Community Broadcasters Protection Act of 1999 (the “1999 Act”), in which the provisions of §336(f) were enacted. As stated in a section-by-section analysis of the 1999 Act contained in House Report No. 106-384, dated October 14, 1999:

Paragraph (4) makes clear that the FCC is not required to issue Class A LPTV stations (or translators) an additional license for advanced television services. The FCC, however, must accept applications for such services, provided the station will not cause interference to any other broadcast facility applied for, protected, permitted or authorized on the date of the filing of the application for advanced television services. Either the new license for advance television services or the original license must be forfeited at the end of the DTV transition. The licensee may elect to convert to advanced television services on its analog channel, but its not required to convert to digital format until the end of the DTV transition. (emphasis added).

H.R. Rep. No. 384, 106th Cong., 1st Sess. 1999, 1999 WL 825053 (Leg. Hist.). In sum, the House Report, along with the entirety of paragraph 4, including its heading (see footnote 2) make clear that LPTV stations are not subject to the same statutory mandate

² Section 336(f)(4) of the Act states as follows:

(4) ISSUANCE OF LICENSES FOR ADVANCED TELEVISION SERVICES TO TELEVISION TRANSLATOR STATIONS AND QUALIFYING LOW-POWER TELEVISION STATIONS.

The Commission is not required to issue any additional license for advanced television services to the licensee of a class A television station under this subsection, or to any licensee of any television translator station, but shall accept a license application for such services proposing facilities that will not cause interference to the service area of any other broadcast facility applied for, protected, permitted, or authorized on the date of filing of the advanced television application. Such new license or the original license of the applicant shall be forfeited after the end of the digital television service transition period, as determined by the Commission. A licensee of a low-power television station or television translator station may, at the option of licensee, elect to convert to the provision of advanced television services on its analog channel, but shall not be required to convert to digital operation until the end of such transition period.

with respect to termination of analog service as are Class A television stations and television translators.

B. The Paramount Public Interest Requires Commission Restraint in Mandating the Digital Transition for Incumbent LPTV stations.

9. Island's LPTV stations are not carried on any cable systems or direct-to-home satellite systems. Nor does Island have any expectation that its stations will ever be carried by a multi-channel video distributor. Thus, all of Island's viewers depend on over the air reception for viewing Island's stations. By and large, Island's viewers are non-affluent, ethnic and/or foreign-language speaking urbanites residing in the New York metropolitan area. To the limited extent that they may have cable or direct-to-home satellite service, they watch Island's stations on a second TV set in the home - - a smaller, much cheaper model than the one primarily used for reception of the multi-channel video service.

10. Given these circumstances, Island submits that the vast majority of its stations' viewers will not be in a position to afford the equipment necessary to receive over-the-air digital service anytime soon. Certainly, they will be far slower than the more affluent population of the New York area to acquire such equipment. Thus, to arbitrarily force Island's stations to digitally convert when its viewers cannot receive such programming defies logic and is contrary to the public interest. For this reason alone, the Commission should take a less aggressive approach to incumbent LPTV stations' conversion to digital, and allow market forces and private business judgments to dictate when LPTV stations should make that conversion.

11. Stated otherwise, in Island's view, there would be no harm to the public interest or to the Commission's regulatory scheme to allow analog LPTV stations to continue to operate if sufficient spectrum remains available to them. Such operation will not disrupt the auctioning of the upper 700 MHz band since all television stations will be operating in the "core" by December 2006. Moreover, permitting analog LPTV service to remain operational will not detract in any way from full service digital television stations' ability to offer multiple channels with a programming and/or data service. Hence, the Commission will not be helping any video service, whether LPTV or full service television, by dictating the timing of the transition from analog to digital service for LPTV stations.


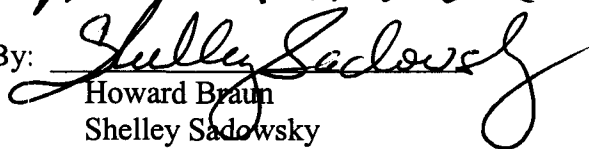
12. Moreover, it cannot be overlooked that the cost to a LPTV station for conversion to digital operation will be at least \$100,000, at a minimum, for adequate filtering, modulating, studio equipment, etc. Many LPTV stations simply do not and will not have the financial wherewithal to make such a substantial investment by a date certain, especially when it is clear, as indicated above, that their viewing audiences, especially in urban areas, will be lagging behind in acquiring the equipment required to receive digital signals. Thus, there is no valid basis to force such stations to undertake this burdensome and risky obligation by a date certain.

13. In sum, the Commission is under no statutory mandate to set a deadline for incumbent analog LPTV stations to convert to digital operations, and there does not appear to be any substantial public interest benefit in doing so. Island thus urges the Commission to let the marketplace and a licensee's own judgment determine when such conversion should take place. Clearly, given that there is every reason not to rush that

conversion, the Commission would run the substantial risk of jeopardizing continued incumbent LPTV operations if it were to impose an artificial conversion deadline on LPTV stations. After an admirable record of creating and nurturing the LPTV industry along for twenty years, that certainly is not what the Commission intended, nor should it be the outcome of Commission regulation.

Respectfully submitted,

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